

The sale of natural gas or gas services in Illinois is subject to taxation under the Gas Revenue Tax Act. See the enclosed copy of 86 Ill. Adm. Code 470.110. (This is a GIL).

March 26, 1999

Dear Xxxxx:

This letter is in response to your letter dated March 1, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY based company, is considering building a facility in the State of Illinois. This facility will produce electricity which will be sold to brokers. Will this facility be considered a manufacturer in Illinois? It is our understanding that a information letter already exists on this subject.

Also, COMPANY plans on using natural gas as its fuel source for producing electricity. Is the natural gas subject to sales and use tax? Are there any other taxes (utility tax) on natural gas?

If you have any questions, please call me at ####. Thank you for your time.

We understand your question to be whether the machinery or equipment used to produce electricity will qualify for the manufacturing machinery and equipment exemption. The manufacturing machinery and equipment exemption applies to sales of manufacturing machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The Department does not consider electricity to be tangible personal property. As a result, machinery and equipment used to produce electricity will not qualify for the manufacturing machinery and equipment exemption.

The Illinois Retailers' Occupation Tax and Use Tax (sales taxes) do not apply to the sale of natural gas or gas services by public utilities or their use by consumers. However, the sale of natural gas or gas services in Illinois is subject to taxation under the Gas Revenue Tax Act (35 ILCS 615/1 et seq.).

The rate of the Illinois Gas Revenue Tax, which is imposed upon persons engaged in the business of distributing, supplying, furnishing, or selling gas to persons for use or consumption and not for resale, can vary depending upon which of the following methods is used. The tax is imposed either at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold, or transported to or for each customer in the course of such business, or 5 percent

of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period. See the enclosed copy of 86 Ill. Adm. Code 470.110. Section 9-222 of the Public Utilities Act provides that whenever a tax is imposed upon a public utility engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption pursuant to Section 2 of the Gas Revenue Tax Act, such utility may charge its customers an additional charge equal to the total amount of such tax.

The Municipal Code (at 65 ILCS 5/8-11-2) also authorizes certain municipalities to impose a tax on persons engaged in the business of distributing, supplying, furnishing, or selling as for use or consumption within the corporate limits of a municipality. Information about a particular municipal gas tax would have to be obtained from the municipality, as the Department of Revenue does not administer these particular taxes.

Please note that the Electricity Excise Tax Law, 35 ILCS 640/2-1 et seq., became effective August 1, 1998. Section 2-4 of that Law provides that the tax is imposed on the privilege of using in this State electricity purchased for use or consumption and not for resale. See 35 ILCS 640/2-4. Therefore, electricity either sold for resale or purchased for resale would not be subject to Electricity Excise Tax liability. However, any electricity sold for use or consumption would be subject to tax. Electricity Excise Tax must be collected by the delivering supplier unless the customer is a self-assessing purchaser. See 35 ILCS 640/2-9.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.